



7th November 2013

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The General Manager - Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131 Canberra ACT 2601
adjudication@accc.gov.au

RE: Australasian Performing Right Association Ltd application for revocation of authorisations A91187-A91194 & A91211 and substitution of new authorisations A91367-A91375

Dear Sir,

The Association of Australian Musicians (AM) welcomes the opportunity to comment on the above applications for re-authorisation as part of the Australian Competition and Consumer Commission's process of consultation with interested parties.

AM is the peak industry organisation representing Australian musicians. The overwhelming majority of Australian musicians are independent, unaligned with major publishers or labels.

AM understands the vital role APRA|AMCOS provides in the collection and distribution of royalties and note that the overwhelming majority of APRA|AMCOS members are also independent musicians.

The State Of The Music Industry For Australian Musicians

Available data demonstrates a continuing downward trend in opportunities for musicians and performers in Australia.

The Sydney Council Live Music Taskforce released a report this week showing evidence of a 61% decrease in live gig listings in nine years (540 in a sample week in 2004 down to 213 in the same period in 2013).

Music sales are in decline, including physical product sales and digital downloads, largely due to piracy and streaming sites, including Spotify and Pandora.

According to Australia Council ArtFacts, APRA only distributed 15 percent (\$20 million) of revenue to local songwriters and composers, while 42 percent was distributed to publishers. APRA states that 75% of Australian APRA members receive less than \$400 annually.

Voting for APRA Directors

AM is in a unique position to assist APRA develop a more equitable balance between the needs of Australian musicians, that predominantly operate independent small businesses, and the needs of major international publishing companies that traditionally dominate APRA's board of directors.

The current arrangements for voting for APRA board members where each member has one vote plus one more for every \$500 royalties they earn, results in enforcement, monitoring, accounting, distribution, communication and dispute resolution inequalities and inefficiencies for Australian musicians.

AM recommends a maximum of three publishers or musicians signed to publishers on the board, directorships limited to a maximum of three one-year terms and no proxies. This will modernize and reinvigorate APRA.

In the past, publishers have played a vital role in the music industry, but with the advent of technological advancements and media convergence, musicians can now fund, produce, publish and distribute their own music from home.

The profile of APRA's board members should reflect this with more independent musicians as board members.

Dispute Resolution - Peer Review

The ACCC is proposing to require APRA to make improvements to its dispute resolution process. The proposal outlined below should particularly benefit musicians in their dealings with APRA. Currently, if musicians have a dispute with another composer, APRA's ADR dispute resolution procedures recommend:

1. Lodge complaints in writing to APRA
2. Mediation
3. Expert Determination
4. Litigation

The problem with this system is that APRA and the lawyers that conduct mediation and expert determination are not musical experts.

It can take years for composers to negotiate with APRA, attend mediation and expert determination and pay subsequent legal fees before disputing parties can have a day in court.

Much of the heartache, time and money could be saved by introducing a simple and cost effective "Peer Review" process for members that remain unsatisfied after lodging initial complains and discussing options with APRA staff.

In AM's proposal the disputing parties would submit evidence to an agreed 5-member panel of musical peers who are not board members. The disputing parties would pay a set fee to cover panelists' professional fees.

The panel's subsequent report would introduce expert testimony early in disputes rather than after years of expensive and largely irrelevant legal procedures. Either party could suggest mediation or litigation if unsatisfied with the results. This would give both parties and APRA invaluable insight as to how it would probably play out in court.

Please support this proposal to introduce a Peer Review procedure when composers' initial complains remain unresolved.

Reporting Procedures For Community Media

Australian musicians are widely supported by community radio, but community radio only accounts for 3% of publishing revenue derived from all radio. Due to the dominance of US and

UK artists in commercial media, community media is the only opportunity most Australian musicians have to earn broadcast royalties.

Looking at current trends in the US, community media has greatly increased revenue from subscriptions and advertising sponsorship and gained market share over the past decade and that trend is likely to occur in Australia.

As community media adds value, music royalties will increase, so it makes sense to introduce 100% year-round reporting of community radio music playlists now.

Community media currently only reports to APRA for four weeks each year. As a result, APRA is unable to properly calculate and distribute royalties derived from community media to Australian musicians.

Australian community radio and television stations are generally very supportive of local artists and they could easily install a simple app to record all music that is broadcast. In turn, APRA could have instant access to this data to pay composers more equitably.

Music Recognition Technology

AM supports the use of music recognition technology in royalty collection and we encourage the immediate introduction in all possible areas to reduce fraud, lax reporting practices, music piracy, and other copyright issues.

APRA have indicated to AM that introduction of music recognition technology is being delayed due to the high cost, but we see its introduction as being of vital importance to the fair collection and distribution of royalties regardless of initial costs. In this age of computer advancement, we have instant online access to all our accounts, why not music royalties? AM believes that musicians simply can't afford not to have it.

We understand the technology that enables fairer royalty collection is being resisted by some vested interests that are satisfied with the current arrangements, but no moral or equitable reason has surfaced.

Accounting Practices

AM members request APRA provide more comprehensive data accompanying distribution reports to all members with information on where, when and who used each composition.

Currently, APRA only provide composers with the amount of royalties earned and the country of origin, which disconnects composers from clients and inhibits the progress of Australia's domestic and export music markets.

APRA's Licensing And Distribution Practices Applicable To Concerts And Live Performances Generally.

AM does not support this proposal because it disadvantages the majority of Australian musicians.

APRA's Administration Costs

Australian musicians would like to see more detailed accounting of all administration expenditure resulting in a more efficient APRA with increased distributions to Australian

musicians. AM does not support the “Calculation And Application To Licensing Revenue Pools” proposal by APRA last week because it would disadvantage most Australian musicians.

Information

Australian musicians require more information about all areas of APRA’s activities, better communication between members facilitated by APRA, more effective and balanced promotion of issues affecting Australian musician members and more effective awareness campaigns.

The More Aussie Music Campaign

APRA staff members have been very supportive of AM’s recent request to promote the More Aussie Music campaign directly to all of APRA’s 70,000+ members to further demonstrate APRA’s primary role of supporting Australian musicians.

APRA staff have offered to develop a proposal with AM to present to APRA board members at the next board meeting in November 2013 and we await the outcome of the board’s decision.

Timetable For Re-authorisation

Australian musicians have limited resources to respond to the size and complexity of these issues in a short time-frame, especially considering reforms proposed last week to musician members at the APRA|AMCOS Roadshow regarding the redistribution of royalty payments and administration costs, which are of paramount concern to musicians.

Therefore in the best interests of Australian musicians, we welcome ACCC’s proposal to continue APRA’s interim authorisation until AM has had reasonable time to consult with ACCC and APRA following their responses to this submission.

Yours sincerely,

Adrian Keating, John Prior, Tania Smith, Geoff Marr, David Redhill, Bob Spencer, Brecon Walsh, Anita Monk, Andy Townsend, Peter PrizePic, Amanda Kay, Kerry Ian McKenna, Nigel Kentish, Tom McLeod, Mark Gardner, Peter Sedgwick, Debbi Lalor, John Pisani, Brian Henderson, Geoffrey Cartwright, Tony David Smith, Justin Salmon, Mark Dickinson, Alex Green, Vivica Singer, Ian Chambers, Scott Astill, Glenn Roche, Scott Whatman, Jeff Dibble, Manfred W. Vijars, Brett Jones, Marcel Tabone, For Pete's Sake Songs And Music, Lisa Scelzi, Bruce Black, Col Ganderton, Debra Varlow, Joshua Meijer, Mario Tagliaferri, Thomas Fodor, Nik Janev, Jo Volta, Robert Barber, Lincoln Linchdrums, Grace Marino, Garry Kealey, Catherine Alison, Michael Lynch, Ben Jacob, Paul Bidmead, Pete Batt, Steve Simpson, Melinda Anne Ingram, Mark Smith, Jeny OHara, Kate Keighran-Martin, Bernie Keenan, David Every, Neale Dane, Graham Jamieson, Mark Pengilly, Jenny Azzopardi, Pete Lawson, Joe Tattersall, Barry Ferrier, Lili Gale, Lee M Safar, Paul Cook, Phil Bryant, Lee Bradshaw, Darryl John, Wayne Weatherley, Tania Ladyzhynsky, Steven Thomas Little, Chris McGinness, Nia Robertson, Kevin Hinds, Matt Black, James Mann, Neale Dane, Ross East, Jules Saint, Laurent Brun Lafferrere, Barbara Whitehead and Shirley Lynn.